IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 386 OF 1997.

Shri K.M. Maralkar, Police
Sub-Inspector/Radio Mechanic,
Police Department,
Wireless Section, PHQ,
Panaji, Goa. ... Petitioner.

Versus

1. State of Goa through
   the Chief Secretary,
   Secretariat, Panaji.
2. Inspector General of Police,
   Police Headquarters,
   Panaji.
3. Shri E.D. Gaude, Police
   Inspector/Radio Mechanic,
   Wireless Section, P.H.Q.,
   Panaji.
4. Directorate of Social
   Welfare through District
   Probation Officer, Junta
   House, 18th June Road,
   Panaji. ... Respondents.

Petitioner in person.

Mr. Guru Shirodkar, Additional Government Advocate for the Respondents 1 and 2.

Mr. S.G. Dessai, Senior Advocate with Mr. D.B. Ambekar, Advocate for the Respondent No. 3.

Coram: D G. DESHPANDE AND
P.V. HARDAS, JJ.

Date: 10th February 2003.

ORAL JUDGMENT (PER HARDAS, J.)

The present petition has been filed for quashing the promotion of the third respondent to the post of Police Inspector/Radio Mechanic and for quashing and setting aside the Memorandum, dated 2nd December 1994, declaring that the post of Police Inspector/Radio

Mechanic is an isolated post. The other relief is for directing respondents 1 and 2 to consider the petitioner's case for promotion to the post of Police Inspector/Radio Mechanic by reviewing the Departmental Promotion Committee.

2. The facts giving rise to the filing of the present petition can briefly be summarised as hereunder:-

The petitioner, who is a Scheduled Caste candidate, was appointed by letter, dated 14th May 1990, by direct recruitment, as a reserved candidate for the post of Police Sub-Inspector/Radio Mechanic. Initially, the petitioner was appointed on probation for a period of two years. According to the petitioner, the probation period was never extended and he has successfully completed the said probation period.

3. In the year 1987, for the first time, the post of Police Inspector/Radio Mechanic was created by the second respondent. According to the petitioner, the said post was a promotional avenue for persons holding the post of Police Sub-Inspector/Radio Mechanic. The qualification prescribed for being promoted to the post of Police Inspector/Radio Mechanic is that the candidate

must be a Police Sub-Inspector/Radio Mechanic, with at least five years regular service and having qualified as Radio Technician Grade I. Further, according to the petitioner, right from the creation of the said post of Police Inspector/Radio Mechanic, the first and second respondents have been maintaining 40 points roster and point 1 in the said roster is reserved for Scheduled Caste. The respondents, by the Memorandum, dated 26th September 1994, declared the post of Police Inspector/Radio Mechanic as an isolated post and, accordingly, no reservation was made applicable either for recruitment at the initial stage or for filling up the future vacancy in respect of that post.

4. On 21st September 1995, the petitioner made a representation to the second respondent stating that he was fully eligible for being considered for promotion to the post of Police Inspector/Radio Mechanic. The petitioner had also stated that the said vacancy was reserved. This representation had been made by the petitioner on the assumption that the said post would fall vacant on account of promotion of Shri M.D. Nachinolkar to the post of Deputy Superintendent of Police (Wireless). The second respondent, by letter, dated 8th November 1995, replied to the representation of the petitioner that there was no vacancy as on date

and the representation of the petitioner would be examined at an appropriate time. On 12th November 1996, the petitioner again submitted a representation to the Superintendent of Police for consideration to the post of Police Inspector/Radio Mechanic.

5. According to the petitioner, the Departmental Promotion Committee met on 2nd September 1997 and was pleased to recommend the name of the third respondent for being promoted to the post of Police Inspector/Radio Mechanic. The petitioner, by his representation, dated 10th September 1997, sought a review of the decision of the Departmental Promotion Committee. The petitioner again represented his case on 26th September 1997, to the Superintendent of Police (Training) but to no avail.

6. In the affidavit filed on behalf of the third respondent, it is stated that the third respondent was at Serial No. 2 in the seniority list and was holding all the requisite qualifications for being promoted to the post of Police Inspector/Radio Mechanic. The third respondent has also placed the seniority list at Exhibit R-3/F (Colly), which shows that the petitioner was at Serial No. 7, while the third respondent was at Serial No. 1. The date of appointment of the petitioner is 18th May 1990, while the date of appointment of the

third respondent is 24th January 1980.

7. The petitioner, in this petition, while challenging the promotion of the third respondent to the post of Police Inspector/Radio Mechanic, has not alleged any malafides nor has he alleged that the third respondent was not holding the requisite qualifications. It is also not the case of the petitioner that the third respondent was junior to him and has been promoted bypassing his legitimate claim. The only challenge, which has been urged before us, is that the petitioner, who is a Scheduled Caste, ought to have been promoted by applying the 40 point roster and that, even to an isolated post, reservation would apply.

8. In the affidavit filed by the Superintendent of Police, it is stated that the post of Police Inspector/Radio Mechanic is a single cadre post in the Wireless Organization of this Department. It is being filled by promotion from amongst the eligible Police Sub-Inspector/Radio Mechanic only. It is further stated in the affidavit that the said post was declared as an isolated post and, hence, no reservation arises. It is stated in the affidavit that the respondents are following the guidelines in respect of reservation to backward classes and Scheduled Caste/Scheduled Tribe by

maintaining the 40 point roster. It is also stated that the vacancy for filling up the post of Police Inspector/Radio Mechanic arose on 23rd May 1996 due to the promotion of its incumbent to the next higher post. However, the said post being a single cadre post, no reservation was made for Scheduled Caste/Scheduled Tribe.

9. Mr. Shirodkar, the learned Additional Government Advocate appearing on behalf of the respondents 1 and 2, has invited our attention to the Judgment of the Apex Court in **Post Graduate Institute of Medical Education & Research, Chandigarh v. Faculty Association and others**, (1998) 4 S.C.C. 1. The question before the Constitutional Bench was whether in a single cadre post reservation for Scheduled Caste/Scheduled Tribe and other backward classes can be applied either directly or through the roster in which vacancies are rotated amongst general category and reserved category candidates. The Honourable Apex Court has held as follows:-

> "In a single post cadre, reservation at any point of time on account of rotation of roster is bound to bring about a situation where such a single post in the cadre will be kept reserved exclusively for the members of the backward classes and in total exclusion of the general members of the public. Such total exclusion of

> general members of the public and cent per cent reservation for the backward classes is not permissible under the constitutional framework. Until there is plurality of posts in a cadre, the question of reservation will not arise because any attempt of reservation by whatever means and even with device of rotation of roster in a single post cadre is bound to create 100% reservation of such post whenever such reservation is to be implemented. The device of rotation of roster in respect of a single post cadre will only mean that on some occasions there will be complete reservation and the appointment to such posts is kept out of bounds to the members of a large segment of the country who do not belong to any reserved class, but on some other occasions the post will be available for open competition when in fact, on all such occasions, a single post cadre should have been filled only by open competition amongst all segments of the society. The view taken in Chakradhar case is approved that there cannot be any reservation in a single post cadre. Contrary decisions in Madhav, Brij Lal Thakur and Bageshwari Prasad cases, upholding reservation in a single post cadre either directly or by device of rotation of roster, are not approved. The impugned decision in the case of Post Graduate Institute of Medical Education and Research [judgment dated 2-5-1997 in Civil Appeal No. 3175 of 1997, reported as batch matter at (1997) 6 SCC 283] cannot also be sustained. It is therefore set aside."

10. We have heard the petitioner in person. Apart from the point, to which we have made a reference in the earlier paragraphs, the petitioner has not urged any other point in support of the challenge to the promotion of the third respondent. In view of the Judgment of the Apex Court in Post Graduate Institute of Medical

Education and Research, Chandigarh (supra), we see no merit in the petition and the Writ Petition is dismissed with no order as to costs. Rule stands discharged.

(D.G. DESHPANDE)
JUDGE.

(P.V. HARDAS)
JUDGE.

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